Supreme Court, U.S.
FILED
AUG 18
CLERK

No. 82-144

IN THE

Supreme Court of the United States

October Term, 1982

JOHN J. HARRIS and RUTHETTA HARRIS,
Petitioners,
v.
RESEARCH FEDERAL CREDIT UNION,
Respondent,
v.
EUGENE OSTROWE and KAREN OSTROWE,
Petitioners,
v.
DEARBORN FEDERAL CREDIT UNION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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COUNTER STATEMENT OF QUESTION PRESENTED FOR REVIEW

DID THE COURT OF APPEALS PROPERLY APPLY THIS COURT'S DECISION IN *FORD MOTOR CREDIT COMPANY* v *MILHOLLIN* TO THE FACTS OF THIS CASE?

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Case:

Ford Motor Credit Company v Milhollin, 444 US 555, 100 S Ct. 790; 63 L. Ed2d 22 (1980) 1,2, 3,4,5

Other Authorities:

MCLA 440.9204(4)(b) 2,4

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COUNTER STATEMENT OF CASE

The District Court in an opinion written before this Court decided the case of *Ford Motor Credit Company* v *Milhollin*, 444 US 555, 100 S Ct. 790; 63 L. Ed2d 22 (1980) found Respondent's loan forms in violation of 15 USC Section 1601 et seq and Regulation Z in two respects.

The District Court held that the acceleration clause in the security agreement should have been disclosed in the disclosure statement and further that the loan documents while mentioning that a security agreement would cover after-acquired property did not disclose the ten-day limitation on after-acquired property contained in MCLA 440.9204(4)(b).

Petitioners appealed all of the issues that they were unsuccessful on at the trial and Respondents filed a cross appeal in the Sixth Circuit Court of Appeals.

Judges Engle, Kennedy and Celebrezze reversed the District Judge holding that pursuant to *Ford Motor Credit Company* v *Milhollin*, 444 US 555, (1980) that Respondent's forms did not violate the Truth in Lending Act.

On April 22, 1982, the Petitioners Motion for Rehearing in the Court of Appeals was denied.

Although the Proof of Service regarding the instant Petition indicates that the Petition was filed on July 21, 1982, it was not received by Respondent's counsel until July 29, 1982.

SUMMARY OF ARGUMENT

There is no conflict in the decisions of the United States Circuit Courts of Appeal and the Court of Appeals properly applied this Court's decision in *Ford Motor Credit Company* v *Milhollin*, to the facts of this case.

ARGUMENT

When the District Court found violations in the Truth in Lending Act with respect to the acceleration clause and the after-acquired property clause (A5, A8) the Court did not have the benefit of this Court's decision in *Ford Motor Credit Company* v *Milhollin*, 444 US 555, 100 S Ct. 790; 63 L. Ed2d 22 (1980). The acceleration clause in the *Milhollin* case was identical in all relevant respects to the clause at issue here. The disclosure form complied with Official Staff Interpretaton No. FC-0054, 42 FR 18056 (1974-1977 Transfer Binder) Cons. Cred. Guide (CCH) Section 31, 552, Apr. 4, 1977 which stated that the right to accelerate need not be disclosed under Regulation Z.

This Court in *Milhollin, supra*, specifically held that it was not error to follow this Official Staff Interpretation. The Court of Appeals stated:

> "After the District Court's decision in this case, the Supreme Court decided *Ford Motor Credit Company* v *Milhollin*, 444 US 555, (1980). In that case, the Court was faced with an acceleration clause identical in all relevant respects to the clause at issue here. The Court rejected the reasoning in St. Germain. It held that neither the TILA nor the Regulations passed thereunder clearly controlled the disclosure of acceleration clauses. In the absense of a clear expression one way or the other, the Court reversed the Ninth Circuit for failing to defer to the Federal Reserve Board's interpretation stating that disclosure is not required. Under *Milhollin* it is clear that Defendants in this case did not violate the TILA or Regulation Z by failing to disclose any aspects of the acceleration clauses in the disclosure statements." (App. 2)

The disclosure statement in the loan contained the following language:

> "Security agreement will secure future or other indebtedness, and after-acquired property."

The District Court found that the disclosure statements violated Regulation Z because they did not disclose the ten-day limit on after-acquired property contained in MCLA 440.9204(4)(b).

Based on *Milhollin* and Federal Reserve Board Staff Letter No. 983 dated December 30, 1975, 5 Cons. Cred. Guide (CCH) 31, 323, the Court of Appeals found that the staff opinion letter was in effect at the time of trial and was clearly not irrational. The staff opinion letter clearly indicated that only the fact that after-acquired property would be subject to a security interest had to be disclosed.

In *Milhollin*, this Court indicated that Congress specifically designated the Federal Reserve Board and Staff as the primary source for interpretation and application of the Truth in Lending Law. The Court indicated that the legislative history showed a decided preference for resolving interpretive issues by uniform administrative decision rather than piecemeal through legislation. This Court in *Milhollin* indicated that the Federal Reserve Board Interpretations must be followed unless they are demonstrably irrational.

Contrary to Petitioner's assertions, there is no conflict in the Circuit Court of Appeals decisions after the *Milhollin* case was decided.

Issue IV raised in Petitioner's brief is clearly improper and it is not subject to review at this point as it contains an issue which was not ruled on by the Sixth Circuit Court of Appeals. (App. 1)

Clearly, the result in this case was totally consistent with this Court's decision in *Ford Motor Credit Company* v *Milhollin*, and Petitioner has not raised any issue which has not already heen decided by this Honorable Court.

CONCLUSION

This Court in *Ford Motor Credit Company* v *Milhollin*, clearly stated that Federal Reserve Board Staff Opinions are despositive unless they are demonstrably irrational. The forms used by Respondents were approved by two separate Opinions of the Federal Reserve Board which the Court of Appeals found clearly were not demonstrably irrational.

Wherefore, it is respectively requested that this Honorable Court deny Petitioner's Petition.

Respectfully Submitted,

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Dated: August 9, 1982